

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

STATE OF INDIANA,  
*ex rel.* Steve Carter, Attorney General of Indiana,  
and the CITY OF EAST CHICAGO,  
*ex rel.* Steve Carter, Attorney General of Indiana,

Plaintiffs,

vs.

Cause No.

ROBERT A. PASTRICK; TIMOTHY W. RAYKOVICH;  
EDUARDO MALDONADO; FRANK KOLLINTZAS;  
ADRIAN SANTOS; JOE DE LA CRUZ;  
JOSE VALDEZ, JR.; PEDRO PORRAS;  
GEORGE E. WEEMS; FRANK MISKOWSKI;  
JOEL MARKOVICH; KIMBERLY K. ANDERSON;  
JAMES HAROLD FIFE, III;

A & A ENTERPRISES; ACE ENTERPRISE;  
A-1 DAVE'S TREE SERVICE, INC.,  
d/b/a DAVE'S TREE SERVICE;  
B & S CONSTRUCTION; CALUMET CONCRETE &  
MASONRY, INC; D/S COMMERCIAL EQUIPMENT &  
CONSTRUCTION; GARCIA LE & ASSOCIATES, LLC.,  
d/b/a GREAT LAKES ENGINEERING, LLC.;  
H & Y MAINTENANCE CO., INC.;  
J.G.M. ENTERPRISES, INC.; RESIDENTIAL  
CONSTRUCTION SERVICE, INC., a/k/a  
RESIDENTIAL ROOFING & CONCRETE, INC.;  
RIETH-RILEY CONSTRUCTION CO., INC.;  
ROGERS & SONS CONSTRUCTION, INC.;  
T.R.I., INC.; TRIPLE J CONSTRUCTION;  
WINDSTORM ENTERPRISES, INC.;  
ST. PAUL FIRE AND MARINE INSURANCE;

and DEFENDANTS A through Z,

Defendants.

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION**  
**FOR STAY OF PROCEEDINGS**

Plaintiffs, State of Indiana, *ex rel.* Steve Carter, Attorney General of Indiana, and the City of East Chicago, *ex rel.* Steve Carter, Attorney General of Indiana, by counsel, respectfully submit this Brief in Support of Motion for Stay of Proceedings, and would show the Court as follows:

## INTRODUCTION

Plaintiffs recognize that it is usually the defendant, subject to parallel civil and criminal cases, who requests a stay in the pending civil matter. Nonetheless, Plaintiffs respectfully request this Court to stay all proceedings, including but not limited to motions and discovery, in this civil matter pending the outcome of the criminal prosecution by the United States Attorney for the Northern District of Indiana, *United States of America v. Frank Kollintzas, et. al., Cause No. 3:03 CR 91-RM*, and any other criminal prosecutions resulting from the grand jury's continuing investigation into substantially the same acts and transactions by the several common Defendants that are the subject of this case.

## FACTS

The Federal Bureau of Investigation first brought Plaintiffs attention to the possibility of wrong doing by the defendants in February 2000 when it suggested that the State Board of Accounts ("SBOA") should focus on a 1999 sidewalk program during the conduct of its examination of East Chicago's records for the Audit Period ended December 31, 1999. Because the City's records were incomplete and had to be augmented, the SBOA was unable to issue findings critical of the 1999 sidewalk program until it conducted its audit for the Audit Period ending December 31, 2000. It then certified that report to the Indiana Attorney General on November 6, 2001.

In an effort to obtain cooperation in the civil prosecution of Plaintiffs' claims, the Attorney General met with Joseph Van Bokkelen, United States Attorney for the Northern District of Indiana, on December 14, 2001. Subsequent to that meeting Van Bokkelen requested that Plaintiffs forestall filing their civil claims until after his Office made the information related to the sidewalk program public.

On September 5, 2003, a Federal Grand jury indicted Defendants Kollintzas, De La Cruz, Santos, Maldonado, Porras and Valdez on public corruption charges (18 U.S.C. §§ 2, 371, 666, 1001, 1341, 1343, 1346, 1503 and 1623). These indictments were supplemented by the indictments of Councilman Randall Artis and Terrance Artis, the owner of Defendant A & A Enterprises, on May 7, 2004. As of this date, the grand jury that handed down those indictments continues its investigation and indictments of other named defendants may well be forthcoming.

### DISCUSSION

A court has the discretion to stay civil proceedings, postpone discovery, or impose protective orders and conditions "when the interests of justice seem ( ) to require such action, sometimes at the request of the prosecution, ... sometime at the request of the defense." *Securities and Exchange Commission v. Dresser Industries, Inc.*, 628 F.2d 1368, 1375 (D.C.Cir.), cert. denied, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed. 2d 289 (1980) (quoting *United States v. Kordel*, 397 U.S. 1, 12 n. 27, 90 S.Ct. 763, 770, n. 27, 25 L.Ed. 2d 1 (1970) (citations omitted); *Afro-Lecon, Inc. v. United States*, 820 F.2d 1198, 1202 (Fed. Cir. 1987). A stay is appropriate, and most likely to be granted, "where the civil and criminal actions involve the same subject matter." *Brock v. Tolow*, 109 F.R.D. 116, 119 (E.D. NY 1985).

When faced with parallel civil and criminal proceedings, the court may consider a variety of factors, including:

(a) the interest of the plaintiff in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to the plaintiff of a delay; (b) the burden which any particular aspect of the proceedings may impose on the defendant; (c) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (d) the interests of persons not parties to the civil litigation; and (e) the interest of the public in pending civil and criminal litigation.

*Benevolence Int'l Found., Inc. v. Ashcroft*, 200 F. Supp. 2d 935, 938 (N.D. Ill. 2002); *see also Midas International Corp. v. G.V. & G. Transp. Servs., Inc.*, 1987 W.L. 18916 (N.D. Ill.); *Cruz v. County of Dupage*, 1997 WL 370194 (N.D. Ill.). In other words, "the court must balance the civil plaintiff's right to prepare his case promptly against the public's interest in withholding full disclosure sought by the civil plaintiff." *Benevolence*, 200 F.Supp.2d at 938.

**A. The Civil And Criminal Cases Involve The Same Subject Matter**

Although the grand jury has not yet completed its investigation, a simple comparison of the Indictments already issued in the criminal proceedings and pending before this Court and Plaintiffs' Complaint confirms the similarity between the facts, transactions and circumstances of the two cases.

The Indictments allege that several of the Defendants in this civil action violated both the mail and wire fraud statutes as part of their scheme to avoid bid laws and obtain political favor. In addition, the Indictment alleges that those defendants, without lawful authority, directed and authorized various contractors to do concrete work and tree trimming on private property for political and nonpublic purposes and to submit work proposals in a manner so as to avoid state bidding rules. The Indictments also allege a

over-up scheme by those Defendants in the City Council to wrongfully appropriate money and to obtain a Bond Anticipation Note with fraudulent representations to replace the money that was paid without authorization and appropriation to the contractors in their scheme leaving the City of East Chicago account a multi-million dollar negative balance. Finally, the Indictments allege that some of the defendants otherwise participated in the 1999 sidewalk program in violation of various state laws.

Plaintiffs' Complaint, filed simultaneously with this Motion for Stay and Brief in Support thereof, is brought under 18 U.S.C. Section 1961 *et seq.* as well as various State claims for relief, including Indiana Code Section 34-24-2-1 *et seq.*, and various common law claims. Specifically, Plaintiffs seek to redress the harm done to the public welfare and the property of East Chicago and the State of Indiana that has resulted from the Defendants' conducting the affairs of, or participating directly or indirectly in the conducting of the affairs of, an enterprise engaged in interstate commerce, through a pattern of criminal activities wherein they unlawfully used more than \$18 million of funds belonging to the City of East Chicago to construct sidewalks, driveways, patios, porches and parking lots and to trim trees on public and private property and then cover it up. The purpose of Defendants' pattern of criminal activities was to corrupt the electoral process in the May 1999 East Chicago Democrat Party mayoral primary.

Thus, an examination of the Complaint and Indictments show that both the civil and criminal cases rely on substantially the same acts and transactions.

**B. The Civil And Criminal Cases Involve The Same Defendants**

Although all of the Defendants have not been indicted, a comparison of the indictments already issued with Plaintiffs' Complaint shows that the unindicted

defendants have engaged in similar activities rendering them vulnerable to the same charges. Thus, although Plaintiffs have no way of knowing which, if any, of the unindicted defendants are the targets of the grand jury's investigation, there is no reason to believe otherwise or that similar indictments are not forthcoming.

Plaintiffs' Complaint includes all 6 Defendants named in the September 5, 2003 Indictment and 6 additional individual Defendants, including the Mayor of the City of East Chicago and 5 more City employees.<sup>1</sup> Plaintiffs allege that the additional defendants have also, without lawful authority, directed and authorized various contractors to do concrete work and tree trimming on private property for political and nonpublic purposes and to submit work proposals in a manner so as to avoid state bidding rules. Further, Plaintiffs allege that the additional defendants assisted in a cover-up scheme by those Defendants in the City Council to wrongfully appropriate money and to obtain a Bond Anticipation Note to replace the money that was paid without authorization and appropriation to the contractors in their scheme leaving the City of East Chicago account a multi-million dollar negative balance.

Plaintiffs' Complaint also names 15 contractors who participated in the scheme by performing public and nonpublic work consisting of concrete or tree services without proper authorization and appropriation, avoiding bid requirements and backdating documents to obtain financing for the scheme. As indicated above, Terrance Artis one of the co-owner's of defendant contractor A & A Enterprises, was indicted on May 7, 2004, for performing the same activities.

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<sup>1</sup> Raykovich is Special Assistant to the Mayor, Fife preceded Raykovich as Special Assistant to the Mayor, Miskowski and Weems are on the Board of Public Works, and Anderson is a Deputy Controller.

Therefore, although Plaintiffs have named unindicted Defendants, the facts asserted in the Complaint coupled with the allegations in the already issued Indictments, demonstrate that all of the defendants are potential targets of the grand jury's still open investigation.

**C. Factors Supporting the Issuance of the Stay**

First, many of the documents and records from the Individual Defendants and the Company Defendants critical to both the civil and criminal cases, were submitted to the federal grand jury and now enjoy the protection of Federal Rule of Criminal Procedure 6(c). Thus, documents essential to both Plaintiffs and Defendants are unavailable pending resolution of the criminal case. Further, while the criminal prosecution is ongoing, many Defendants may well elect to exercise their Fifth Amendment rights thereby thwarting Plaintiffs' efforts to obtain critical discoverable information in their civil suit. The large number of records and documents submitted to the grand jury compounds this problem in this case. Plaintiffs' and Defendants' discovery efforts will be scuttled by the Fifth Amendment or the refrain that the United States Attorney took all of my records.

The requested stay may actually reduce the scope of discovery or otherwise simplify the issues by allowing the criminal case to go to resolution. A criminal verdict of guilty may have collateral estoppel or res judicata effects in the civil case and, in the alternative, an acquittal may expose the strengths and weaknesses of the case assisting with the resolution of the civil matter. See *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 (1979), and decisions following, including *county of Cook v. MidCon Corp.*, 773 F.2d 892, 906 (7<sup>th</sup> Cir. 1985); *Midas International*, 1987 WL 18916, at \* 2; see also

*County of Cook v. Lynch*, 560 F. Supp. 136, 138 (N.D. Ill 1982 ) (“it is possible that the criminal proceedings will eliminate the need for some discovery in the civil case and will possibly resolve some issues”).

A stay will not prejudice the Defendants in this case. The criminal case will act as a prism bringing into focus the acts and transactions common to both cases as well as the roles played by the parties. Also, the Defendants will be spared the traditional Fifth Amendment dilemma when cases against them are pursued on parallel civil and criminal tracks, invoking the Fifth Amendment and risk losing the civil action or answering discovery questions and risk providing fodder for their prosecution.

While a stay would address the discovery problems created by the particulars of this case it would also address the public interest by insuring that the Criminal Defendants do not reap the benefit of the more liberal discovery rules in the civil case to gather evidence that they might not be entitled to under the more restrictive criminal rules. *Benevolence*, 200 F.Supp. 2d at 94939-940 (“allowing [the defendant] to obtain civil discovery in this case would circumscribe the restrictive rules of criminal discovery” and potentially “compromise the ongoing federal investigation.”).

Finally, there is no disservice to the public interest by granting a stay in this case. The enforcement of criminal laws is a societal priority. The stay will not spoil the injunctive relief and financial damages available in the civil case. Although vestiges of the Sidewalk for Votes scheme remain in place and several of the Defendants are still in positions of public trust, the attendant news coverage of the scheme and the remoteness of the next mayoral primary make the likelihood of a renewed implementation slight.



WHEREFORE, Plaintiffs, State of Indiana, *ex rel.* Steve Carter, Attorney General of Indiana, and the City of East Chicago, *ex rel.* Steve Carter, Attorney General of Indiana, by counsel, respectfully request that the Court stay these civil proceedings in their entirety, including but not limited to all motions and discovery, until resolution of *United States of America v. Frank Kollintzas, et. al., Cause No. 3:03 CR 91-RM*, and any other criminal cases resulting from the ongoing grand jury investigation.

Respectfully Submitted,

STEVE CARTER  
Attorney General of the State of Indiana

A handwritten signature in black ink, appearing to read "Lawrence J. Carcare II", written over a horizontal line.

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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was filed simultaneously with the Complaint and Summons to be served therewith to each named Defendant on this 3<sup>rd</sup> day of August 2004.

  
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